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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,445	07/22/2003	Jonathan Kirschner	25040.0920	1444
29052	7590	11/22/2004		
SUTHERLAND ASBILL & BRENNAN LLP 999 PEACHTREE STREET, N.E. ATLANTA, GA 30309				EXAMINER
				ALEXANDER, REGINALD
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 11/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/604,445	KIRSCHNER ET AL.
	<b>Examiner</b> Reginald L. Alexander	<b>Art Unit</b> 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 October 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.
  - 4a) Of the above claim(s) 20-30 is/are withdrawn from consideration.
- 5) Claim(s) 12,14 and 17-19 is/are allowed.
- 6) Claim(s) 1-6,8-11,13,15 and 16 is/are rejected.
- 7) Claim(s) 7 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

This application contains claims 20-30 drawn to an invention nonelected with traverse in the Examiners Action filed 23 July 2003. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 8-11, 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baecchi et al.

There is disclosed in Baecchi a container for holding ground coffee, comprising: a body 230; a lip 234 extending from the body, the lip having a flat top surface; a flange 235 extending from the lip; a base having a plurality of apertures therein; and a lid 231 having a plurality of apertures therein.

Baecchi discloses the claimed subject matter except for a lip having a width of no more than about 2.6 mm. It would have been obvious to one having ordinary skill in the art to construct the lip of Baecchi within the claimed size range, since the size of the lip in Baecchi is close enough to have the same properties as the claimed size.

It has been held that where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

In regards to claim 15, it is old and well known in the art to use filter paper within a brewing container. It would have been obvious to one skilled in the art to provide the container of Baecchi with filter paper since it was known in the art that filter paper helps remove impurities.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baecchi in view of Gasser et al.

Gasser discloses the use of a plurality of ribs at the base of a beverage container. It would have been obvious to one skilled in the art to provide the container of Baecchi with support ribs as taught by Gasser, in order to elevate the beverage material above the apertures in the base.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baecchi in view of Favre.

Favre discloses that it is known in the art to use spikes at the base of a beverage brewing container. It would have been obvious to one skilled in the art to provide the container of Baecchi with the spikes disclosed in Favre, in order to open up a beverage package within the container so as to allow the entry of brewing liquid.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baecchi in view of Aarts.

Aarts discloses that it is known in the art to place ground coffee within a foil before placement within a brewing container. It would have been obvious to one skilled in the art to provide the container of Baecchi with the foil envelope of Aarts, in order to provide an alternative way of placing coffee grounds into the container.

***Allowable Subject Matter***

Claims 12, 14 and 17-19 are allowed.

Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed October 8, 2004 have been fully considered but they are not persuasive. Applicant argues that the claimed lip size is not obvious to one skilled in the art. And that the size was selected so as to use as little material as possible while being able to withstand the force of the injector head.

Since applicants invention is structurally the same and performs the same function as that of the prior art, and differs only by the relative dimensions of the flange, the claimed device is not patentably distinct from the prior art device. It has been held that discovering optimum values or workable ranges involves only routine skill in the art.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Reginald L. Alexander*

Reginald L. Alexander  
Primary Examiner  
Art Unit 1761

rla  
November 18, 2004